IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL WRIT PETITION NOS. 12, 13, 17 AND 18 OF 2002.

CRIMINAL WRIT PETITION NO. 12 OF 2002.

Sahibzada Syed Habib-ur-Rehman,
r/at A-9, USO Road,
Qutub Institutional Area,
New Delhi. ... Petitioner.

Versus

1. V.S. Dempo & Co. Ltd.,
   'Dempo House', Campal,
   Panaji.
2. ITC Limited. 'Virginia House',
   37 J.L. Nehru Road,
   Kolkata.
3. Yogesh Chander Deveshwar,
   'Virginia House', 37 J.L.
   Nehru Road, Kolkata.
4. Anup Singh, 'Virginia House',
   37 J.L. Nehru Road, Kolkata.
5. Bishwadev Mitter, 'Virginia
   House, 37 J.L. Nehru Road,
   Kolkata.
6. Saurav Misra, Grasim Industries
   (Cement Division), Dalamal House,
   8th Floor, Nariman Point, Mumbai.
7. Feroze R. Vevaina, Sethana
   Construction Pvt. Ltd., Grands
   Building, 3rd Floor, Colaba,
   Mumbai.
8. Ravi Ramchandran, Taib Capital
   Corporation Ltd., 9th Floor,
   Vidyut Chamber, M.G. Road,
   Bangalore.
9. D. Narain, Monsanto (India) Ltd.,
   Ahura Centre, 5th Floor,
   Mahakali Caves Road, Andheri (E),
   Mumbai.
10. Girish Nadkarni, Taib Capital
    Corporation Ltd., 123 Maker
    Chambers VI, Nariman Point,
    Mumbai.
11. State of Goa through P.P., Panaji. ... Respondents.

Mr. N. Natarajan, Senior Advocate with Mr. A.D. Bhobe, Advocate for the Petitioner.

Mr. Shirish Gupte, Senior Advocate with Mr. M.P. Rao and Mr. M. Tellis, Advocates for the Respondent no. 1.

Mr. V.P. Thali, Addl. Advocate General for the Respondent no. 11 State.

CRIMINAL WRIT PETITION NO. 13 OF 2002.

Yogesh Chander Deveshwar,
'Virginia House', 37 J.L.
Nehru Road, Kolkata. ... Petitioner.

Versus

1. V.S. Dempo & Co. Ltd.,
   'Dempo House', Campal,
   Panaji.
2. ITC Limited. 'Virginia House',
   37 J.L. Nehru Road,
   Kolkata.
3. Sahibzada Syed Habib-ur-Rehman,
   'Virginia House', 37 J.L. Nehru
   Road, Kolkata.
4. Anup Singh, 'Virginia House',
   37 J.L. Nehru Road, Kolkata.
5. Bishwadev Mitter, 'Virginia
   House, 37 J.L. Nehru Road,
   Kolkata.
6. Saurav Misra, Grasim Industries
   (Cement Division), Dalamal House,
   8th Floor, Nariman Point, Mumbai.
7. Feroze R. Vevaina, Sethana
   Construction Pvt. Ltd., Grands
   Building, 3rd Floor, Colaba,
   Mumbai.
8. Ravi Ramchandran, Taib Capital
   Corporation Ltd., 9th Floor,
   Vidyut Chamber, M.G. Road,
   Bangalore.
9. D. Narain, Monsanto (India) Ltd.,
   Ahura Centre, 5th Floor,
   Mahakali Caves Road, Andheri (E),
   Mumbai.
10. Girish Nadkarni, Taib Capital
    Corporation Ltd., 123 Maker
    Chambers VI, Nariman Point,
    Mumbai.
11. State of Goa through P.P., Panaji.

Mr. Amit Dessai with Mr. A.D. Bhobe, Advocates for the Petitioner.

Mr. Shirish Gupte, Senior Advocate with Mr. M.P. Rao and Mr. M. Tellis, Advocates for the Respondent no. 1.

Mr. V.P. Thali, Addl. Advocate General for the Respondent no. 11 State.

CRIMINAL WRIT PETITION NO. 17 OF 2002.

Anup Singh, 'Virginia House',
37 J.L. Nehru Road, Kolkata. ... Petitioner.

Versus

1. V.S. Dempo & Co. Ltd.,
   'Dempo House', Campal,
   Panaji.
2. ITC Limited. 'Virginia House',
   37 J.L. Nehru Road,
   Kolkata.
3. Yogesh Chander Deveshwar,
   'Virginia House', 37 J.L.
   Nehru Road, Kolkata.
4. Sahibzada Syed Habib-ur-Rehman,
   'Virginia House', 37 J.L. Nehru
   Road, Kolkata.
5. Biswadev Mitter, 'Virginia House',
   37 J.L. Nehru Road, Kolkata.
6. Saurav Misra, Grasim Industries
   (Cement Division), Dalamal House,
   8th Floor, Nariman Point, Mumbai.
7. Feroze R. Vevaina, Sethana
   Construction Pvt. Ltd., Grands
   Building, 3rd Floor, Colaba,
   Mumbai.
8. Ravi Ramchandran, Taib Capital
   Corporation Ltd., 9th Floor,
   Vidyut Chamber, M.G. Road,
   Bangalore.
9. D. Narain, Monsanto (India) Ltd.,
   Ahura Centre, 5th Floor,
   Mahakali Caves Road, Andheri (E),
   Mumbai.
10. Girish Nadkarni, Taib Capital
    Corporation Ltd., 123 Maker
    Chambers VI, Nariman Point,
    Mumbai.
11. State of Goa through P.P., Panaji.

Mr. N. Natarajan, Senior Advocate with Mr. A.D. Bhobe, Advocate for the Petitioner.

Mr. Shirish Gupte, Senior Advocate with Mr. M.P. Rao and Mr. M. Tellis, Advocates for the Respondent no. 1.

Mr. V.P. Thali, Addl. Advocate General for the Respondent no. 11 State.

CRIMINAL WRIT PETITION NO. 18 OF 2002.

Biswadev Mitter, 8, Earle

Street, Kolkata. ... Petitioner.

Versus

1. V.S. Dempo & Co. Ltd.,
   'Dempo House', Campal,
   Panaji.
2. ITC Limited. 'Virginia House',
   37 J.L. Nehru Road,
   Kolkata.
3. Yogesh Chander Deveshwar,
   'Virginia House', 37 J.L.
   Nehru Road, Kolkata.
4. Sahibzada Syed Habib-ur-Rehman,
   'Virginia House', 37 J.L. Nehru
   Road, Kolkata.
5. Anup Singh, 'Virginia House',
   37 J.L. Nehru Road, Kolkata.
6. Saurav Misra, Grasim Industries
   (Cement Division), Dalamal House,
   8th Floor, Nariman Point, Mumbai.
7. Feroze R. Vevaina, Sethana
   Construction Pvt. Ltd., Grands
   Building, 3rd Floor, Colaba,
   Mumbai.
8. Ravi Ramchandran, Taib Capital
   Corporation Ltd., 9th Floor,
   Vidyut Chamber, M.G. Road,
   Bangalore.
9. D. Narain, Monsanto (India) Ltd.,
   Ahura Centre, 5th Floor,
   Mahakali Caves Road, Andheri (E),
   Mumbai.
10. Girish Nadkarni, Taib Capital
    Corporation Ltd., 123 Maker
    Chambers VI, Nariman Point,
    Mumbai.
11. State of Goa through P.P., Panaji.

Mr. Amit Dessai with Mr. A.D. Bhobe, Advocates for the Petitioner.

Mr. Shirish Gupte, Senior Advocate with Mr. M.P. Rao and Mr. M. Tellis, Advocates for the Respondent no. 1.

Mr. V.P. Thali, Addl. Advocate General for the Respondent no. 11 State.

Coram : P.V. HARDAS, J.

Date : 7th February 2003.

ORAL JUDGMENT.

These Writ Petitions have been filed by some of the original accused in Private Criminal Case No. 39/2001/C, pending on the file of the Judicial Magistrate, First Class, Panaji, challenging the Order, dated 10th September 2001, passed by the learned trial Court, issuing process against the petitioners and the other accused for offences punishable under Sections 120-B, 406, 409, 420 read with Sections 34 and 109 of the Indian Penal Code.

2. The petitioner in Criminal Writ Petition No. 12 of 2002 is original accused no. 3, the petitioner in Criminal Writ Petition No. 13 of 2002 is original accused no. 2, the petitioner in Criminal Writ Petition No. 17 of 2002 is original accused no. 4 and the petitioner in Criminal Writ Petition No. 18 of 2002 is original accused no. 5. With the consent of the counsel for the parties these Petitions are being decided finally at the stage of admission.

3. In order to understand the rival submissions, it will be useful to make a detailed reference to the facts as are disclosed in the complaint filed before the learned trial Court. The petitioners have annexed the copy of the complaint. The relevant paragraphs read

thus:-

"5. The Complainant deployed funds since the year 1992, with the Accused No. 1 and its associates and group companies. The Accused No. 1 always enjoyed a highest rating in the financial sector with rating agencies of repute. Therefore the investments made by the Complainant were always considered safe whilst investing with the Accused No. 1 and its associates and group companies. Apart from the rating, the Accused No. 1 was a company with diverse interest and with a monopoly in tobacco related products, and was internationally recognized as one of the efficiently managed companies. The investments of the Complainant were normally in Inter Corporate Deposits, Bills Discounting Facility and Bills Rediscounting Facility, with the Accused No. 1 and its following associates and group companies:

1. ITC Agro Tech Ltd.
2. ITC Classic Finance Ltd.
3. Sage Investments Ltd.
4. Summit Investments Ltd.
5. Pinnacle Investments Ltd.
6. ITC Agro Tech Finance and Investments Ltd.
7. All India Tobacco Ltd.
8. Trans Global Impex Ltd.
9. VST Investments Ltd.
10. Tobacco Diversification Investments Ltd.

The Accused No. 1 was controlling the aforesaid group companies through shareholdings and/or through its nominee Directors on the Board of Directors of the group or associate companies.

6. Accused No. 1 is a Company formed and registered under the Companies Act 1956 having its Registered Office at the address mentioned hereinabove. The Accused No. 2 at all material

times, is the Whole Time Chairman of the Accused No. 1 and the position is equivalent to that of a Managing Director of a Company under the Companies Act, 1956. Accused Nos. 6 and 7 at the relevant time were the Whole Time Deputy Chairmen of Accused No. 1. The Accused Nos. 6 and 7 were also the in-charge of the Financial Services Division (hereinafter called FSD) at the relevant time when the transactions took place and the default thereof, between the Accused No. 1 and the Complainant. Accused Nos. 3, 4 and 5 besides Accused No. 1, 6 and 7, as Whole-time Directors, constituted the Corporate management Committee of the Accused No. 1. All decisions pertaining to the FSD located at Mumbai, were taken with the knowledge and consent and approval of the Accused Nos. 2 to 7. Accused No. 8 at the relevant time was the head of the FSD at Mumbai of the Accused No. 1. Accused No. 8 was an employee of the Accused No. 1 and also managed the secretarial and legal matters of the FSD of the Accused No. 1. Accused No. 8 was also the Director of ITC Agro Tech Finance and Investments Ltd., (hereinafter called ITC ATF) and VST Investments Ltd., (hereinafter called VST) as a nominee of Accused No. 1. The Accused No. 9 was the in-charge of operations of the FSD at Mumbai of the Accused No. 1 at the relevant time. The Accused No. 9 was also the Executive Director of ITC ATF and a Director of VST as a nominee of Accused No. 1. The Accused No. 10 was an employee of Accused No. 1 and was working with the FSD of the Accused No. 1 at Mumbai since 1995. The Accused No. 10 was assisting the Accused Nos. 8 and 9 in all financial operations/dealings of the Accused No. 1's FSD at Mumbai and was aware of the transactions between Accused No. 1 and the Complainant and more particularly participated in bringing about the transaction which caused wrongful gain to the Accused No. 1 and wrongful loss to the Complainant.

7. At all material times to the present complaint, the Complainant was

dealing exclusively with the FSD of Accused No. 1 at Mumbai for the deployment of its funds both with Accused No. 1 as well as with the Associate and Group Companies of Accused No. 1. The Accused No. 1 carried on its Financial Services business in Mumbai through its FSD at its office located at 18th floor, World Trade Centre, Cuffe Parade, Mumbai 400 005. The FSD of Accused No. 1 at Mumbai was inter alia managed at the relevant time by Accused Nos. 8, 9 and 10 under the supervision of Accused Nos. 6 and 7. Apart from the aforesaid Accused, the Complainant also dealt with certain other Senior Managers of Accused No. 1 particularly Mr. Shriram Khattar and Mr. Ajay Srinivasan.

8. The Complainant was at all material times only interested in the deployment of surplus funds with Companies with sound financials. As per the arrangement with Accused No. 1, the FSD of Accused No. 1 rendered itself liable and responsible not only for the deployment of funds of the Complainant with Accused No. 1 and its Associate and Group Companies but also for the return of such deployed funds alongwith accruals. As per the practice that was followed between the Complainant and Accused No. 1 over a large number of years, the Complainant was never required to meet or deal with any of the Managers/Executives of Associate/Group Companies of the Accused No. 1 in which funds of the Complainant were deployed nor was the Complainant ever required to follow up the repayment or the return of its deployed funds with accruals from such Group/Associate Companies. The deployment of funds by the Complainant with Accused No. 1 and or its Associate/Group Companies were always for a short tenor generally not exceeding a period of 90 days.

9. The Complainant was deploying its surplus funds in short term investments with reputed companies for which it had used a financial intermediary in one Shri Gaurang

Gandhi. In the year 1992 the said Gaurang Gandhi introduced the Complainant to the personnel of the Financial Services Division of the Accused No. 1. The then personnel of Accused No. 1 represented to the Complainant, as under:

a) that one of the functions of the financial Services Division was to source out the prospective lenders of the funds such as the Complainant to the Accused No. 1, or its associates and group Companies, for their requirements;

b) that the Financial Services Division of the Accused No. 1 would intimate to the Complainant the name of the group companies or associates for whom the funds would be required;

c) that all deployment and return on Investments would be made through the Financial Services Division of the Accused No. 1 from its Mumbai Office;

d) that the Financial Services Division of the Accused No. 12 would negotiate and determine the rates of the returns/accruals of the deployed funds;

e) that the Complainant would never have to meet or was required to meet the personnel and/or officers of the group companies or the associate companies of the Accused No. 1 and all contacts of the Complainant would be with the Financial Services Division of the Accused No. 1;

f) that the Complainant was not required to go into the fundamentals/financials, strengths of the group companies or the associate companies;

g) that the Complainant had to only look to the Accused No. 1 in the event of any defaults in the return of funds and in such eventuality the Accused No. 1 would be responsible to ensure return of the invested funds to the Complainant.

The Complainant believed and trusted the above representations and was deploying funds with the Accused No. 1 from the year 1992. The Complainant was led to believe that the representations were true and that the Complainant could rely upon the same.

10. On the basis of the representation set out in paragraph 10 the Complainant deployed funds from time to time with the Accused No. 1 and the associate/group companies. The mode and method of the deployment of Funds was as follows:

a) The Financial Services Division of the Accused No. 1 would call the Head Office of the Complainant and enquire if funds were available for deployment.

b) Similarly the Complainant would contact the Financial Services Division of the Accused No. 1 from its Head Office at Panaji and enquire if its surplus funds could be invested through the FSD of Accused No. 1.

c) The Complainant would inform the Financial Services Division of the Accused No. 1 of the quantum and tenor of the deployment and the Financial Services Division of the Accused No. 1 would inform the name of the entity and the details relating to the deployment of funds.

d) The Financial Services Division would thereafter forward the documents with regard to the deployed funds to the Complainant.

e) On the date of maturity the Complainant would either, depending upon its requirements renew the deployment of the funds or alternatively receive the deployed funds with the accruals through the Financial Services Division of the Accused No. 1.

11. The Complainant says that pursuant to the aforesaid representations the Complainant deployed its funds for short term

investments with the Accused No. 1 and its Associate/Group Companies. All deployment was through the FSD of Accused No. 1.

12. In June 1995, the Accused Nos. 7 and 8 informed the Complainant that the Accused No. 1 was restructuring its Financial Services and that the Complainant was being invited to participate in the financial arrangement for restructuring activity of the Accused No. 1 and was informed as follows:

a) That the Accused No. 1 pursuant to a Report of a Consultant M/s. McKinsey & Co. was planning for restructuring its entire Financial Services business.

b) That the Financial Services business then carried on by the Accused No. 1 and the other Non Banking Finance Companies in the Group were overlapping resulting in unwarranted competition and lack cohesiveness, leading to uneconomical cost of operations.

c) As a result, the said Consultant advised restructuring whereby the Group Companies carrying on financial services business were to be under the umbrella of ITC Classic Finance Ltd. (hereinafter called ITC Classic).

d) That such Group Company or Associate Company which was carrying on financial services business would be de-linked from such Group Company or Associate Company which carried on manufacturing activity.

e) That in view of the recommendations of the Consultant, steps were being initiated to de-link ITC ATF from ITC Agrotech Limited, (hereinafter called ITC AT) a Company manufacturing refined cooking oil.

f) That ITC AT was holding 100% equity of ITC ATF and that Accused Nos. 8 and 9 acting for and on behalf of the Accused No. 1 were directed to initiate steps by the Accused No. 1

to de-link ITC ATF from ITC AT and to bring in the same under the effective control of ITC Classic.

g) For this purpose, ITC Classic Finance Ltd., required funding for a specific period of time to acquire the entire equity shares of ITC ATF from ITC AT.

h) Accused Nos. 8 and 9 at the behest of Accused No. 1 were therefore sourcing out parties who had long standing relationship with the group and with whom they had trust and more particularly with the FSD of Accused No. 1 who could be approached for the deployment of funds as the financial arrangement in purchasing the equity shares of this closely held Company from ITC AT and holding the same for a period of 18 months on their behalf.

i) In that light, Accused Nos. 8 and 9 approached the Complainant with a request for funding a sum of Rs. 5 crores by way of Preference Shares in ITC ATF and for the purchase of Equity Shares in ITC ATF from ITC AT in the value of approximately Rs. 3.57 crores. Both these deployments, it was represented, were for a short period ranging from 12 to 18 months.

j) In so far as the deployment of the funds in the Equity Shares were concerned Accused Nos. 8 and 9 represented that the Complainant would be purchasing 17 lakhs equity shares of ITC ATF from ITC AT @ Rs. 21/- per share aggregating to Rs. 3.57 crores, to match the funding requested in the financial arrangement, as per plans envisaged.

k) It was represented that the financial arrangement of deployment of Funds in Equity of ITC ATF would be for a short period of 18 months from November 1995, i.e., approximately until May 1997, and the period would commence from the date of deployment of funds.

l) It was represented further that at the end of 18 months period, as per

the arrangement a nominee of Accused No. 1 which would be ITC Classic Finance Ltd., or a subsidiary of the Accused No. 1 would buy back the 17 lakhs shares from the Complainant at a pre-determined premium.

m) It was also stated that for the Complainant agreeing to deploy Rs. 3.57 crores in the purchase of equity shares from ITC AT, the Accused No. 1 would assure a pre-tax accrual of 31% or post-tax accrual of 19% for the sums deployed by the Complainant as a consideration for the financial arrangement to enable the Accused No. 1 to implement the restructuring plans.

n) The Accused Nos. 8 and 9 on behalf of FSD of Accused No. 1 reiterated that the proposal and the basis of deployment of the sum of Rs. 3.57 crores was purely a financial arrangement and it never meant to treat the deployment of funds as an investment in equity of a closely held Company in the Group of the Accused No. 1 and the Complainant would never be considered as a Shareholder of ITC ATF.

13. Believing the representation to be true and more particularly on the representation that the deployment of funds of the Accused No. 1 would be for a short period of 18 months and the fact that the Accused No. 1 would as in the past ensure repayment of the deployed funds with its accruals as agreed, the Complainant's Vice President Finance agreed to recommend its Management to deploy the sum of Rs. 3.57 crores in the purchase of shares of ITC ATF. The Accused Nos. 8 and 9 were informed that as the proposal was not the normal type of investment made by the Complainant, i.e., in Inter Corporate Deposits, Bill Discounting or Bill Rediscounting, the Accused Nos. 8 and 9 were required to assure the Management of the Complainant at Panaji, Goa, that the funds to be deployed by the Complainant were sought by the Accused No. 1 who would

be liable to return the deployed funds to the Complainant with the accruals after the period of 18 months as represented. The Accused Nos. 8 and 9 accordingly visited Panaji, Goa, on 12.09.95 and reiterated and confirmed the terms of the deployment as above, that the same was only a short term financial arrangement to enable the Accused No. 1 to implement its restructuring plans. The Accused Nos. 8, 9 and 10 personally met the then Vice Chairman & Managing Director of the Complainant, i.e., late Vasudeva V. Dempo in making their representations. The representations of the Accused No. 1 were discussed by the Management and on the basis of the above representations and the assurances by the Accused Nos. 8 and 9 representing the Accused No. 1, the Complainant forwarded its cheque for Rs. 3.57 crores drawn on the Bank of India, at Churchgate Branch, Mumbai, dated 08.11.95.

14. On 06.12.95, the Accused No. 10, on behalf of the Financial Services Division of the Accused No. 1, faxed a copy of the draft terms of agreement to the Complainant. The draft agreement reflected the representations made to the Complainant by the Accused No. 1. The Complainant was informed that a formal agreement incorporating the terms of the Agreement be drawn up and sent to the Accused No. 1. The Complainant forwarded a draft agreement clearly setting out the terms of the Agreement between the parties and forwarded the same to the Accused No. 1. The Accused No. 1 thereafter got the Agreement typed on a stamp paper dated 23.05.96 and forwarded the same to the Complainant.

15. As aforesaid, the Complainant received an Agreement on a stamp paper of Rs. 100/-, purchased by the Accused No. 1 in the name of VST Investments Ltd., (hereinafter referred to as VST) duly executed by the Accused No. 8 as an authorised signatory of VST. The Agreement incorporated all the terms and conditions as agreed upon by and

between the Complainant and the Accused No. 1. However, the Complainant found that instead of naming ITC Classic Finance Ltd., or a subsidiary of the Accused No. 1, as was represented, the Accused No. 1 named VST as the entity to buy back the equity shares held by the Complainant. As VST was unacceptable as the named entity, the FSD of Accused No. 1 was informed of the same and the Complainant withheld sending the Agreement on a stamp paper to the Accused. The Complainant also protested against the same. The Complainant called upon the Accused Nos. 8 and 9 to name an entity as was agreed in the discussions/representations to buy back the 17 lakhs equity shares held by the Complainant.

16. In the meanwhile, the Complainant in March 1996, received transfer documents and Share Certificates for 17 lakhs Equity Shares of ITC ATF from ITC AT. After completing the Transfer Deeds, the Complainant handed over the duly completed transfer documents and the Share Certificates to the FSD of Accused No. 1. The FSD of the Accused No. 1 duly got the 17 lakhs shares registered with ITC ATF in the Complainant's name.

17. The Accused Nos. 8, 9 and 10 in response to the protest of the Complainant as above, assured the Complainant that they would in due course of time arrange for the nomination of an entity as agreed and as per the representation. The said personnel of the FSD of Accused No. 1 informed the Complainant that they would need time to complete the formalities. However, they assured the Complainant that the same would be organized before the maturity of the financial arrangement. The Complainant then had no reason to disbelieve the representations of Accused Nos. 7 and 8 as they were Directors of the said VST as well as ITC ATF besides working with the FSD of the Accused No. 1.

18. The Accused No. 1 acting on the advise of the Consultant's report for restructuring had already initiated the move for amalgamation of ITC ATF with the said VST in the Hon'ble High Court of Andhra Pradesh, which was the means used by the Accused to defraud the Complainant. The Accused No. 1 through its FSD at Mumbai addressed a letter dated 15.07.96 requesting for the consent of the Complainant as a Shareholder of ITC ATF for the amalgamation of VST, the Company named for the buy back of the shares from the Complainant, into it. For this purpose, the Accused Nos. 8, 9 and 10 had telephonically on various occasions requested the Complainant for issuing the consent letter. With the letter of 15.07.96 as above, a draft consent letter dated 02.07.96 was also enclosed for the said purpose. The Complainant was shocked and surprised that the Accused had nominated VST for the buy back of the shares for the Complainant despite the accused were well aware that on such an amalgamation the intended commitment for the financial arrangement of the buy back of the shares would never take effect. The Complainant therefore protested to Accused Nos. 8, 9 and 10 on behalf of Accused No. 1 against the nomination of VST and pointed out that the same was contrary to the spirit of the agreement and representations made to the Complainant. The Accused however assured that the Complainant was not concerned with the amalgamation and that it was the duty and responsibility of Accused No. 1 to organize the buy back of the Equity shares and repay the Complainant their dues alongwith the accruals. The Complainant was further informed that there was sufficient time whereby the Accused could arrange for nomination of entity to the satisfaction of the Complainant as represented, to comply with the commitments.

19. The Complainant in the light of repeated assurances given by Accused Nos. 8, 9 and 10 at the behest of

Accused No. 1 accorded their consent to the amalgamation by issuing the consent letter in the format as provided by Accused No. 1 and as per the letter dated 02.07.96 given by them. The Complainant also made the decision since the deployment of funds was for only a period of 18 months and that the accused had made it abundantly clear from time-to-time in their representation that the Complainant did not deploy the funds as an investment in the Equity shares of a closely held Company of the Accused No. 1 whereas it was a mere financial arrangement. However, the Complainant stood by the decision of withholding the agreement for financial arrangement with VST, and had accordingly informed the personnel at FSD of Accused No. 1.

20. As the buy back of the shares was to be completed in May 1997 the Complainant in or around February/March 1997, called upon the Accused Nos. 8, 9 and 10 to ensure that the Accused No. 1 make the necessary arrangements to buy back the equity shares as per the arrangement. The Complainant failing to receive any positive response met the Accused several times between May 1997 to December 1997 with their personnel including a meeting with Accused No. 6 who was then the Deputy Chairman of the Accused No. 1 heading the FSD. The said meeting with Accused No. 6 and the personnel of FSD of Accused No. 1 took place in August 1997. In the said meeting the Accused No. 6 informed the Complainant that Accused No. 1 was reviewing its entire Financial Services business and Accused No. 1 would initiate measures to meet the commitments made by Accused No. 1 to the Complainant.

21. Despite several meetings between the Complainant and the representative of Accused No. 1 for resolving the issue, the Complainant finding the Accused failing to take steps to ensure the return of the Complainant's funds, by a letter dated 03.07.1998 (by the then Vice President (Corporate

Affairs) of the Complainant, the present Chairman and Managing Director) addressed the Accused No. 6 in his capacity as the Deputy Chairman of Accused No. 1 and set out in brief details of the defaults, seeking initiatives/steps to fulfil the commitments of Accused No. 1 to the Complainant in the matter of the buy back of the shares.

22. As the Accused No. 6 failed to respond to the letter dated 08.07.98, the present Managing Director of the Complainant alongwith the Vice President (Finance) visited the Registered Office of the Accused No. 1 at Calcutta and in a meeting with Accused No. 6 stated the manner in which the Complainant was defrauded and/or cheated of its invaluable funds in the sum of Rs. 3.57 crores approximately. The meeting between the aforesaid persons on behalf of the Complainant and the Accused No. 6 took place on 09.09.98. The Accused No. 6 assured the Complainant that the Accused was liable to meet its commitments in repaying the Complainant its funds and that the matter would be amicably settled. On 06.10.98, the Director of the Complainant recorded the events which transpired at the meeting and more particularly the assurances given by the Accused No. 6.

23. In a complete turnabout in his stand, the Accused No. 6 addressed a letter to the Director of the Complainant dated 19.10.98, whereby the Accused No. 6 dishonestly and contrary to the assurance given by him to the Complainant in the meeting of 09.09.98, recorded that as the Accused No. 1 did not have any interest in ITC ATF he was unable to assist in the buy back of the 17 lakhs shares held by the Complainant. The letter dated 19.10.98 was addressed to the Complainant with a clear intention of the Accused No. 1 to disassociate its liability to buy back the shares held by the Complainant.

24. Thereafter by a letter dated

26.11.98 to the Accused No. 6, the Complainant expressed its shock and surprise at complete volte face of Accused No. 6. The Complainant pointed out that in the meeting held on 9th September, 1998 in the office of Accused No. 6, the said Accused No. 6 assured the Complainant of resolving all outstanding issues when the Complainant pointed out to the said Accused No. 6 that he was being approached not only as a Director of the Board of ITC ATF but also a Director of Accused No. 1. The Complainant set out in the said communication the complete facts in the matter of the assurances and also the manner, and the very basis and mode of inducement by the Accused No. 1 through its personnel regarding the financial arrangement whereby the Complainant parted with funds in the sum of Rs. 3.57 crores.

25. In response to the letters dated 06.10.98 and 26.10.98 addressed to the Accused No. 1, ITC ATF vide a letter dated 29.01.1999 issued through an authorised signatory informed the Complainant that the matter relating to the buy back of shares of ITC ATF was discussed in its Board of Directors Meeting dated 22.10.98. It was inter alia recorded that ITC ATF did not have any loan obligation to the Complainant and the financial position of ITC ATF did not permit the buy back of its own 17 lakhs shares as held by the Complainant.

26. As the efforts to secure the repayment of funds failed with Accused No. 6 who was responsible for the activities of the Financial Services business of Accused No. 1, the Complainant thereafter thought it necessary and prudent to pursue the matter with Accused No. 2, being the Chairman and the Chief Executive Officer of Accused No. 1. After securing the appointment the Complainant represented by its present Chairman and Managing Director, Vice President (Finance) and Partner of its Statutory Auditors met the Accused No. 2 at his Office in the Registered

Office of Accused No. 1 at Virginia House, 37, Chowringee, Calcutta, on 24.03.1999. The Complainant presented the Accused No. 2 detailed Note alongwith the forwarding letter dated 22.03.99 containing the background of events and details regarding the Complainant being misrepresented regarding the buy back of equity shares of ITC ATF. The Complainant set out exhaustively the details of the transaction in the Note as well as in the personal representation. Accused No. 2 after hearing the representation stated that Accused No. 1 was not liable to buy back the shares of ITC ATF and refused further to consider the demands of the Complainant without substantiating any valid reasons.

27. The Complainant says that at all material times to the present complaint, the Accused No. 1 has been the actual beneficiary of the funds deployed by the Complainant. The Accused No. 1 had a controlling interest in all the group companies and associate companies of the Accused No. 1 including the ITC ATF. The Accused No. 1 was carrying on a Financial Services activities in Mumbai through its Financial Services Division. The Accused No. 1 through the Accused Nos. 8, 9 and 10 made several representations and induced the Complainant with their dishonest intentions from the very inception to deploy funds in purchase of the shares of the ITC Agro Tech Finance and Investments Ltd. with a promise to repay the amount alongwith the returns after 18 months through a buy back arrangement of shares after 18 months. The Accused were all along aware that the Complainant was always deploying funds through the Accused No. 1 with the group companies of the Accused No. 1 on the premise that the Accused No. 1 would make good the investments of the Complainant in the event of non-payment of the funds of the Complainant by the associate companies or the group companies of the Accused No. 1. The Accused were at all material times aware that the

Complainant always deployed funds through the FSD of Accused No. 1 and that the Complainant never dealt with any of the entities of Accused No. 1.

28. The Complainant says that as per the directions of Accused No. 1, the Accused No. 8, the Accused No. 9 and the Accused No. 10 procured funds from the complainant by way of financial arrangement for the investment in the equity shares of the ITC ATF after representing that the deployment of funds of the Complainant was for financially accommodating the Accused No. 1 to implement its restructuring plans for financial services business. It was represented that the Accused No. 1 was comfortable in working with the Complainant for the financial arrangement to hold the shares in its closely held group company, for a specific period, as the Complainant enjoyed the confidence and trust of Accused No. 1. The Accused represented further that in any event the deployment of funds in the equity shares was for a short duration of 18 months and that the equity shares to be held by the Complainant would be bought back and which shall be in responsibility of Accused No.1. The Accused represented that the Complainant was only concerned with its funds and the returns therein and was never to be treated as a shareholder of ITC ATF.

29. The Complainant says that in November 1995, (at the time of the transaction) the Accused No.1 and its wholly owned subsidiaries, the Sage Investments Ltd., Summit Investments Ltd. and Pinancle Investments Ltd. held approximately 34% equity in ITC Agro Tech Ltd. and ITC Agro Tech Ltd. in turn held 100% equity of ITC Agro Tech Finance and Investments Ltd. The composition of Board of Directors of ITC Agro Tech Ltd. was controlled by the Accused No.1 by virtue of its shareholdings. The Accused No.8 and the Accused No.9 were the nominee Directors of Accused No.1 in ITC Agro Tech Finance and Investments Ltd.

besides being its employees. Thus the Accused No.1 at all material times from November 1995 had complete control over the activities of the ITC Agro Tech Finance and Investments Ltd.. The criminal acts of cheating and alternatively of criminal breach of trust of the invaluable funds in the sum of Rs. 3.57 crores were committed for the sole benefit of the Accused no.1 at the behest of all the Accused.

30. The Complainant says that the Accused No.1 has been the largest and the real beneficiary of the deployment of funds made by the Complainant through the Financial Services Division of the Accused No.1. The Complainant says that in May 1997 (at the time of default) the Accused No. 1 and its wholly owned subsidiary companies such as Sage Investments Ltd., Summit Investments Ltd. and Pinnacle Investments Ltd. held 42.80% equity in ITC Classic Finance Ltd.. In turn ITC Classic Finance Ltd. and its 100% subsidiary the ITC Classic Credit Ltd. and other associate companies such as Russel Investment Ltd., VST Investments Ltd. and the ITC Classic Real Estate Finance Ltd. together held in the ITC Agro Tech Finance and Investments Ltd., approximately 72% of the equity of the ITC Agro Tech Finance and Investments Ltd.. The Complainant says that for the aforesaid reason the employees of the Accused No. 1, i.e., the Accused No. 8 and the Accused No. 9 acted as nominee Directors in ITC Agro Tech Finance and Investments Ltd. at the instance of the Accused No. 1. By virtue of the Accused No. 8 and the Accused No. 9 being the Directors of the ITC Agro Tech Finance and Investments Ltd. and the VST Investments Ltd. the Accused No. 1 through the Accused Nos. 6 and 7 who were at the relevant period the head of the Financial Services Division of the Accused No. 1 controlled the decisions of the Board of Directors of the ITC Agro Tech Finance and Investments Ltd. and the VST Investments Ltd.. The Accused Nos. 6

and 7 who were the head of the Financial Services Division of the Accused No. 1 in turn managed the financial services business of Accused No. 1 as in the present case the ITC Agro Tech Finance and Investments Ltd. through the Accused No. 8, the Accused No. 9 as directors of the said Companies besides being the Chairman of the Board of ITC ATF at the relevant time. The Accused Nos. 6 and 7 were reporting to the Board of Directors of the Accused No. 1 of which the Accused No. 2 was the Whole-time Chairman at the relevant time. The Accused No. 1 was at all material times through its Corporate Management Committee comprising of its Whole-time Directors, exercised control of its Financial Services Division, thereby managing the affairs of its Financial Services business of which ITC Agro Tech Finance and Investments Ltd. and the VST Investments Ltd. were integral part. The Accused No. 1 enforced its decision upon its Financial Services Division through the corporate Management Committee comprising of the Accused No. 2, Accused No. 3, Accused No. 4 and Accused No. 5, the Accused No. 6 and Accused No. 7. The Complainant submits that by the very pattern of management control exercised by the Accused No. 1 enabled the scheming whereby the Complainant was deprived of its invaluable funds.

31. The Complainant says that the Accused defrauded the Complainant of its valuable funds. On the basis of the representations recorded briefly in the fax message dated 6.12.95, the Complainant was induced to part funds in the sum of Rs. 3.57 crores. The Accused No. 1 represented that a) it required funds for period of 18 months by way of Financial arrangement. The funds shall be deployed by way of purchase of 17 lakhs shares of ITC Agro Tech Finance and Investments Ltd. from ITC Agro Tech Ltd. at Rs. 21/- per share, b) the FSD of Accused No. 1 shall be responsible for organising the purchase of shares back from the

Complainant at the end of 18 months period, c) in effect the purchase of shares from the Complainant would be to return the sum of Rs. 3.57 crores with the accrual of, i.e., 30% on the investment pre-tax and 17% post-tax, d) the deployment of funds by the Complainant with the Accused No. 1 was thus a financial transaction and never an intention to make a long term investment in a closely held company belonging to Accused No. 1, e) the FSD of Accused No. 1 would even arrange for meeting the liquidity needs of the Complainant upto the invested funds, during the period of Investment, if called for.

32. The Complainant says that the Accused No. 1 in June 1996 forwarded an agreement on a stamp paper dated 23.5.96 naming VST Investments Ltd. as the entity to buy back 17 lakh shares from the Complainant. The Accused No. 7 at that relevant time was the Chairman of the Board of Directors of ITC Agro Tech Finance and Investments Ltd.. The Accused No. 8 was the Deputy Chairman of the ITC Agro Tech Finance and Investments Ltd.. The Accused No. 9 was the Executive Director of ITC Agro Tech Finance and Investments Ltd.. The Complainant says that the Accused Nos. 8 and 9 were also Directors of the VST Investments Ltd.. Thus the Accused Nos. 8 and 9 at the material time acted not only as Directors of ITC Agro Tech Finance and Investments Ltd., but were also Directors of VST Investments Ltd., besides serving/representing the Financial Services Division of the Accused No. 1 in Mumbai. The Accused No. 8, the Accused No. 9 and the Accused No. 10 constantly reported to the Accused Nos. 6 and 7 at the relevant times, who in turn were reporting to the Corporate Management Committee of the Accused No. 1 and more particularly to Accused No. 2, as the Chief Executive Officer of Accused No. 1 in respect of all matters connected with Financial Services business.

33. The Consultant’s Report was

called for by the Accused for the purpose of restructuring the entire Financial Services business of the accused. The Accused No. 2 and Accused Nos. 3 to 7 being Whole Time Directors and part of the Corporate Management Committee of the Accused No. 1 at the relevant time were parties to the decision in implementing the said plans. The implementation of the plan required desubsidisation of ITC ATF from ITC AT and place the same under the control of ITC Classic Ltd. The Accused chose the Complainant to part finance a sum of Rs. 3.57 crores for the dis-investment by ITC AT to the extent of 17 lakhs shares in ITC ATF with the false representation made by them. The accused conspired to defraud the Complainant by naming VST as the entity to buy back the 17 lakhs shares of ITC ATF from the Complainant. The accused all along conspired to defraud the Complainant as early as in the first quarter of the Calendar Year 1996 as the accused and in particular accused no. 2, was well aware that the amalgamation of VST with ITC ATF would take place.

34. The Accused Nos. 8 and 9 as Directors of the Transferor Company (VST) and Accused Nos. 6, 8 and 9 as Directors of the Transferee Company (ITCATF) participated in the meeting of their respective Board of Directors to initiate the amalgamation proceedings for which both the Board of Directors passed resolutions approving the Scheme on 23.05.96. It is of common knowledge that prior to the initiation of such proceedings in the meetings of the Board of Directors, the Companies need to carry out certain exercises such as preparation of draft Schemes of Amalgamation, obtaining Valuers Report relating to the valuation of shares of respective Companies, etc., which must have been completed by both the Companies well in advance of the Board Meetings approving the Scheme. The Complainant says that such formalities must have commenced as early as last quarter of 1995/first quarter of 1996.

The related Company petition Nos. 90 of 96, 91 of 96, 149 of 96 and 150 of 96 were filed in the Court on behalf of the amalgamating Companies duly signed by Accused Nos. 8 and 9 on 09.07.96.

35. The Complainant says that the Board of Directors of the amalgamating Companies as above passed resolutions approving the amalgamation on 23.05.96 petitions of which were filed in the High Court of Andhra Pradesh on 09.07.1996. Further despite knowledge of the fact that VST was being amalgamated with ITC ATF Accused Nos. 8 and 9 at the behest of Accused No. 1 forwarded the Agreement to the Complainant naming VST as the entity to buy back the shares of ITC ATF from the Complainant. Therefore the Accused deliberately committed the said act fully aware of the fact that the buy back of its own shares by a Company is prohibited by the provisions of the Companies Act 1956 and that execution of the Agreement would render the buy back arrangement inoperative in law whereby the Complainant's rights of obtaining its monies would be wholly defeated.

36. Though the Complainant had protested against the nomination of VST as the same was not in accordance with the representations made prior to securing the funds, the Accused Nos. 8 and 9 repeatedly reassured the Complainant that Accused No. 1 would be responsible for the buy back of the shares and that efforts would be made to comply with the representation made in securing the repayment of the sums deployed by the complainant together with the accruals. With these repeated false representations, the Accused acted dishonestly and with an intent to deceive and cheat the Complainant obtaining the consent of the Complainant for the amalgamation of VST into ITC ATF. The Complainant says that such acts of dishonesty were proved beyond doubt as the Accused blatantly denied the responsibility and obligations of Accused No. 1 for the buy back of the shares repeatedly

on more than one occasion while responding to the representations made by the Complainant to the Accused and in particular Accused No. 7 and Accused No. 2 as the responsible officers of the Accused No. 1.

37. The Complainant says that the Accused have fraudulently and dishonestly induced the Complainant to part with a sum of Rs. 3.57 crores by making false representations to the effect that the funds of the Complainant would be utilized as a financial arrangement to facilitate the restructuring plans as recommended by its Consultant. The fraudulent and dishonest act of the Accused has caused damage and harm to the Complainant. The Accused have dishonestly concealed facts from the Complainant. The Complainant says that the Accused have all cheated the Complainant with the knowledge that Accused would cause wrongful loss to the Complainant and fail to protect the funds of the Complainant in the sum of Rs. 3.57 crores with accruals thereon.

38. The Complainant says that Accused No. 2 being head of Accused No. 1 and its group companies is responsible for all the decisions taken by the Corporate Management Committee. Accused No. 2 is also the head of such Committee and every decision is approved and/or sanctioned by him as the overall responsibility is headed by Accused No. 2. All decision subsequent to deployment of funds of the Complainant are at the behest of Accused No. 2, who has presided over meetings where unscrupulous decisions were taken to divert funds of the Complainant contrary to the terms and understanding of entrustment of funds. To divert the funds of the Complainant with the dishonest intentions right from beginning was the brain child of the Management Committee headed by Accused No. 2 who has complete control over the Committee and activities of Accused No. 1. From the acts and commissions it is clear that all the Accused have acted in

collusion and in conspiracy with each other. It was a well planned conspiracy to cheat the Complainant and divest of its funds which Complainant Company was induced to deploy. The decision was taken in meetings presided over by Accused No. 2 which was obviously communicated to all accused. From the response of Accused No. 2 to the Managing Director of the Complainant, it is clear that he was aware of what reply was to be given to the Complainant in case Accused No. 1 was confronted. Each of the accused have done their acts and performed their role in the conspiracy which was aimed at cheating and defrauding the Complainant. It is thus clear that the Accused have committed offence u/s 120B to be read with Sec. 420, 406, 409 IPC and Sec. 34 and 109 IPC.

39. The Complainant says that the Accused No. 1 through its FSD utilised the money entrusted by the Complainant with Accused No. 1 for purchasing in the name of the Complainant the equity shares of ITC ATF. The Accused had dominion over the funds of the Complainant and have dishonestly misappropriated and or converted the money belonging to the Complainant for their own use in contravention of the terms of entrustment between the Complainant and the Accused No. 1 to repurchase the shares of the ITC ATF within a period of 18 months from the date of the investment by the Complainant. The Accused have committed the offence of criminal breach of trust under Section 406 and Section 409 of the Indian Penal Code.

40. The Complainant states that in furtherance of common intention all the Accused abovenamed have committed the offences under Section 420 and alternatively Sections 406 and 409 read with Section 34 of the Indian Penal Code. The Complainant states that by refusing to abide by the terms of Agreement as contained in the draft Memorandum of Understanding as forwarded by the Accused No. 9 of the

> FSD of the Accused No. 1 and more particularly by refusing to repurchase the equity shares of the ITC ATF held in the name of the said VST the Accused have committed an offence under Section 109 of the Indian Penal Code."

4. The learned trial Court after recording the verification statement of the complainant, by the Order impugned in these petitions, dated 10th September 2001, issued process against the petitioners and the other accused. The learned trial Court by a detailed Order, dated 10th September 2001, came to the conclusion that prima facie the complainant had been able to establish the commission of the offence and, therefore, ordered that the process be issued against the accused.

5. The grounds taken in Criminal Writ Petition No. 12 of 2002 are: (1) the allegations in the complaint only make out a civil dispute and colour has been added to the facts to give them a flavour of an offence under the Indian Penal Code, (2) the learned trial Court has mechanically ordered the issuance of process, (3) there are no allegations against the petitioner of having made any representations to the complainant, (4) the petitioner became a whole-time Director on 21st November 1997 and was, thus, not connected with the transaction which is said to have been entered into way back in November 1995, (5) the accused cannot be summoned to face a trial on the basis of mere bald assertions in the complaint and (6) there

is no material to justify issuance of process under Section 120-B of the Indian Penal Code.

6. The grounds in Criminal Writ Petition No. 13 of 2002, filed by original accused No. 2, are that (1) the allegations in the complaint disclose only a civil dispute but by a skillful twisting of facts the colour of an offence is given, (2) the learned trial Court has mechanically issued process against the accused, (3) there are no allegations against the petitioner of having made any representations to the complainant on the basis of which the complainant was induced to act in 1995, (4) the petitioner assumed office of Chairman only with effect from 1st January 1996 and was obviously not concerned with the transaction of 1995, (5) there is no material for issuing process against the accused and (6) the material on record does not lead to an inference of the ingredient of the offence of criminal conspiracy.

7. The grounds in Criminal Writ Petition No. 17 of 2002, filed by the original accused No. 4, are the same as in the above petitions and also (1) that the petitioner assumed office of a whole-time Director with effect from 21st November 1997 and, thus, was not concerned with the transaction of 1995.

8. The grounds in Criminal Writ Petition No. 18

of 2002, filed by original accused No. 5, are the same as above and also that (1) there was no representation alleged to have been made by the petitioner which induced the complainant to act.

9. I have heard Mr. Natrajan, learned Senior Counsel and Mr. Amit Dessai for the petitioners. I have heard Mr. Shirish Gupte, learned senior counsel for the respondent/complainant. At the outset I record my appreciation for the lucid and erudite submissions made by the learned counsel and the assistance rendered in the disposal of the petitions.

10. Mr. Natrajan, learned senior counsel, submitted that the perusal of the entire complaint does not disclose the ingredients of Section 120-B of the Indian Penal Code. He has also submitted that some of the petitioners were inducted as whole-time Directors subsequent to the representations allegedly made. He has submitted that merely because the petitioners are Directors they cannot be made accused in the trial. Mr. Amit Dessai, the learned counsel for the petitioners has also submitted that there is no material on record to prima facie come to the conclusion to justify the issuance of process.

11. Mr. Natrajan, the learned senior counsel, has

placed reliance on the following Judgments: **Ashim Kumar Roy v. Bipinbhai Vadilal Mehta and others,** (1998) 1 S.C.C. 133. The Supreme Court has held in paragraphs 14, 15 and 18 thus:-

> "14. A cursory reading of the complaint, in particular the extracts especially the underlined portion as given above, will clearly show that the contesting respondents (accused) will come into picture only after the liability contemplated under the modified memorandum of understanding was discharged. In other words, the accused Respondents 1 and 2 could have come into picture only after the transactions complained of had taken place and as noticed above it was the father of the first respondent, who was the Managing Director of Sayaji Industries Ltd., when the transactions in question took place. Respondents 1 and 2 could have played no part in that transaction as they were not even ordinary Directors at that time in M/s. Sayaji Industries Ltd.. Therefore, the allegations made in the complaint even if they are taken in their entirety still they do not constitute an offence either under Sections 120-B and 409 IPC. In the circumstances, it would be manifestly unjust to allow the proceedings in the criminal complaint to be proceeded with against Respondents 1 and 2.
>
> 15. In this connection, though it is very well settled that the power under Section 482 CrPC should be sparingly invoked with circumspection, this Court consistently has taken the view that it should be exercised to see that the process of law is not abused or misused. In **R.P. Kapur v. State of Punjab,** a three-Judge Bench of this Court while considering the exercise of power under Section 561-A of the Code (predecessor for Section 482) held as follows:

> "It is well established that the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice. ... It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. However, we may indicate some categories of cases where the inherent jurisdiction can and should be exercised for quashing the proceedings. There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice. Cases may also arise where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against the accused person."

18. We are in agreement with the view expressed above by the High Court.

> This one aspect is sufficient to quash the proceeding and we need not deal with the other points on which arguments were advanced before us. In the result, the appeals fail and are accordingly dismissed."

Yash Pal Mital v. **The State of Punjab,** A.I.R. 1977 S.C. 2433. The Supreme Court in paragraph 9 has held thus:-

> "9. The offence of criminal conspiracy under S. 120-A is a distinct offence introduced for the first time in 1913 in Chap. V-A of the Penal Code. The very agreement, concert or league is the ingredient of the offence. It is not necessary that all the conspirators must know each and every detail of the conspiracy as long as they are co-participators in the main object of the conspiracy. There may be so many devices and techniques adopted to achieve the common goal of the conspiracy and there may be division of performances in the chain of actions with one object to achieve the real end of which every collaborator must be aware and in which each one of them must be interested. There must be unity of object or purpose but there may be plurality of means sometimes even unknown to one another, amongst the conspirators. In achieving the goal several offences may be committed by some of the conspirators even unknown to the others. The only relevant factor is that all means adopted and illegal acts done must be and purported to be in furtherance of the object of the conspiracy even though there may be sometimes mis-fire or over-shooting by some of the conspirators. Even if some steps are resorted to by one or two of the conspirators without the knowledge of the others it will not affect the culpability of those others when they are associated with the object of the conspiracy. The significance of criminal conspiracy under S. 120-A is brought out pithily by this Court in

E.G. Barsay v. The State of Bombay (1962) 2 SCR 195 at p. 229: (AIR 1961 SC 1762 at p. 1778) thus:

> "The gist of the offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed to be done has not been done. So too, it is not an ingredient of the offence that all the parties should agree to do a single illegal act. It may comprise the commission of a number of acts. Under S. 43 of the Indian Penal Code, an act would be illegal if it is an offence or if it is prohibited by law. Under the first charge the accused are charged with having conspired to do three categories of illegal acts, and the mere fact that all of them could not be convicted separately in respect of each of the offences has no relevancy in considering the question whether the offence of conspiracy has been committed. They are all guilty of the offence of conspiracy to do illegal acts, though for individual offences all of them may not be liable."

We are in respectful agreement with the above observations with regard to the offence of criminal conspiracy."

12. Mr. Gupte, the learned senior counsel for the respondent/complainant, has submitted that a perusal of the complaint would reveal that allegations in respect of the ingredients of the various offences have been made against the accused. Thus according to Mr. Gupte, the learned senior counsel for the complainant, the

complainant has prima facie established the offences justifying the issuance of process against the accused. Mr. Gupte, learned senior counsel, has placed reliance on **Mohamad Usman Mohammad Hussain Maniyar v. The State of Maharashtra,** A.I.R. 1981 S.C. 1062, particularly paragraph 17 of the report, which reads thus:

> "..... It is true that there is no evidence of any express agreement between the appellants to do or cause to be done the illegal act. For an offence under Section 120-B the prosecution need not necessarily prove that the perpetrators expressly agreed to do or cause to be done the illegal act; the agreement may be proved by necessary implication. In this case, the fact that the appellants were possessing and selling explosive substances without a valid licence for a pretty long time leads to the inference that they agreed to do and/or cause to be done the said illegal act, for, without such an agreement, the act could not have been done for such a long time."

13. Mr. Gupte, learned senior counsel, has also placed reliance on the Judgment of the Supreme Court in **State of Maharashtra, Etc. Etc. v. Somnath Thapa,** A.I.R. 1996 S.C. 1744 at paragraph 32, which reads as under:

> "32. The aforesaid shows that if on the basis of materials on record, a Court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the Court were to think that the accused might have committed the offence it can frame the charge, though

> for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage."

14. A perusal of the complaint reveals that the complainant has set out the facts in details. Allegations are made in respect of the present petitioners and the other accused regarding the role which each accused has played. Averments are made in paragraph 38 of the complaint that from the acts and commissions it is clear that all the accused have acted in collusion and in conspiracy with each other. It was a well planned conspiracy to cheat the complainant and divest it of its funds which the complainant company was induced to deploy. Further, it is averred by the complainant in the same paragraph that each of the accused has done his act and performed his role in the conspiracy which was aimed at cheating and defrauding the complainant. Thus the necessary allegations of conspiracy have been pleaded. The complainant has also given a graphic description of the sequence of events, which, according to the complainant, leads to an inference regarding the hatching of the conspiracy. The complainant can prove the agreement by necessary implication by proving the circumstances on the basis of which an inference of existence of conspiracy can be drawn. Can it be said that the allegations of facts

made in the complaint are so utterly baseless that prima facie no offence is disclosed? In my considered view at this preliminary stage, particularly in the factual matrix, it cannot be said that the complainant has utterly failed to plead the necessary facts on the basis of which the Court could not have issued process. The Court issuing the process has only to consider whether the facts disclose prima facie the commission of an offence and not whether the uncontroverted facts are sufficient to maintain a conviction. A complainant must not be deprived of an opportunity of proving the offence, by a meticulous and detailed analysis of the facts in a petition for quashing the complaint. Therefore, according to me, the learned trial Court has not committed any illegality in issuing the process. There are sufficient averments in the complaint in respect of the representations and the entrustment of the property. In view of the allegations of the offence under Section 120-B of the Indian Penal Code, it would be extremely hazardous to quash the complaint in respect of some of the accused against whom, as is sought to be contended, there are no averments in respect of either any representation or any entrustment of the property.

15. The complainant in paragraph 6 has stated that all decisions pertaining to the FSD located at Mumbai, were taken with the knowledge and consent and approval

of the accused nos.2 to 7. The complainant has also stated in paragraph 30 that the accused no. 1 enforced its decisions upon its Financial Services Division through the corporate Management Committee comprising of the accused no. 2, accused no. 3, accused no. 4, accused no. 5, accused no. 6 and accused no. 7. The complainant submits that by the very pattern of management control exercised by the accused no. 1 enabled the scheming whereby the complainant was deprived of its invaluable funds. Thus, according to me, there are allegations against the petitioners and this is not a case of total absence of allegations. The sufficiency or otherwise of the material for warranting conviction is a matter which the trial Court will address itself to after recording the evidence. According to me, this is a case where the complaint cannot be quashed at this stage.

16. The petitioners in Writ Petition Nos. 12, 13 and 17 of 2002 have earnestly pleaded that they had been inducted in the accused company much after the alleged representations were made. These petitioners do not state that in 1995 they were not working in the accused company at all. This is not a case of a total stranger coming in the management fold subsequent to making of the representations. If the accused have been wrongly described in the complaint by the office which they

subsequently held, it would not be a ground to quash the complaint against them. It is not pleaded by the petitioners that they were total strangers unconnected with the affairs of the accused company prior to 1995. According to me, therefore, the petitioners cannot derive any advantage of their becoming whole-time Directors/Managing Director subsequent to the alleged representations made in November 1995.

17. I have given my anxious consideration to the submission of the petitioners and I have perused the complaint and the documents annexed to the petitions. In my considered opinion the complaint does disclose prima facie involvement of the petitioners for the offences stated. The petitions are, thus, devoid of any substance and deserve to be dismissed.

(P.V. HARDAS)
JUDGE.

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